

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

JOSEPH ROSEMOND,)	
Plaintiff,)	
v.)	C.A. No. 04-30072-KPN
)	
STOP AND SHOP SUPERMARKET)	
COMPANY, LLC)	
Defendant.)	

**MOTION TO STRIKE AFFIDAVIT OR IN THE ALTERNATIVE FOR
LEAVE TO FILE RESPONDING AFFIDAVIT**

In accordance with Fed. R. Civ. P. 7 and Local Rule 7.1(B)(3), Defendant The Stop & Shop Supermarket Company, LLC (“Stop & Shop”) hereby moves to strike the affidavit of Plaintiff Joseph Rosemond, dated April 26, 2006 and submitted with “Plaintiff’s Respond to Defendant’s Objections to the Magistrate’s Report.” The affidavit should be stricken because it fails to satisfy the requirements of Rule 56(e) of the Fed. Rules of Civ. Proc. In the alternative, the Court should consider the Affidavit of Kenneth Burroughs, submitted herewith, which establishes that the incident Plaintiff purports to describe in his affidavit is not relevant to Stop & Shop’s motion for summary judgment.

CONCLUSION

For these reasons, and for the reasons set forth more fully in the accompanying Memorandum, the affidavit should be stricken, or in the alternative, Stop & Shop should be permitted to respond by affidavit.

Respectfully submitted,

THE STOP & SHOP SUPERMARKET
COMPANY LLC,

By its attorneys,

/s/ Brigitte M. Duffy

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Dated: May 22, 2006

CERTIFICATION PURSUANT TO LOCAL RULE 7.1

I, Brigitte Duffy, hereby certify that I conferred with counsel for Plaintiff in good faith via telephone on May 3, 2005, in an attempt to resolve issues associated with the instant motion.

/s/ Brigitte Duffy

CERTIFICATE OF SERVICE

I hereby certify that this document filed through the ECF system will be sent electronically to the registered participants as identified on the Notice of Electronic Filing (NEF) and paper will be sent to those indicated as not registered participants on May 22, 2006.

/s/ Brigitte Duffy